D14

Scott II-27—88,004—4-11-46.

Revenue (194 8) Department.

Ms. SERIES.

G.O. NO. 107

Dated 20th January 1948

[Despatch Abstract.]

Prohibition - (Bellary) - Hospet Distillery - Excess Wastage Collection of duty at tariff rate - Petition against the orders of Board - Orders passed.

BOARD OF REVENUE (EXCISE) DEPARTMENT.

Subject:- Prohibition - Hospet Distillery - Excess wastage - Collection of duty at tariff rate - Ordered - Appeal petition - Report - Certain - Submitted.

Read:- Board's Proceedings D.No.395 Pro/47, dated 29-7-47.
From Messrs. The India Sugars and Refineries Ltd., Hospet, Petitions Nos.9762 dated 20-8-47 and [illegible], dated 30-8-47.

C.T.No. 27122 Pro/47-XF.3 Dated 9--9--1947.

STATION - Triplicane, Madras.5
FROM

Md.Munzoor Hussain Khan Sahib Bahadur, B.A.(Hons),
Assistant Secretary, Board of Revenue(Excise).

V.N.Kudva Esq., C.I.E., I.C.S.,
Member, Board of Revenue and Commissioner of Irrigation, Excise and Prohibition.

REFERENCE:-

1 Messrs. The India Sugars and Refineries Ltd., Hospet, were granted a licence in the form approved by Government in G.O.Ms.No. 2113 Revenue, dated 28-9-46, in September 46 for the manufacture of rectified and denatured spirits in their distillery at Hospet. According to condition 2 of the licence, the distillers are bound by the Distillery and warehouse Rules under the Abkari Act. Only denatured spirit is being manufactured in the distillery at present.

2 According to Rule 32 of the Distillery and Warehouse Rules wastage in a distillery for the purpose of collection of duty on the excess shall be calculated at the end of every twelve months from the date on which the licence comes into force. If the licence is granted for a period of less than 12 months, the wastage shall be calculated at the end of such period. The maximum wastage allowed in a distiller is 1.5% and the distillery has to pay to Government duty at tariff rate on all spirits over and above the allowance of 1.5% unless he satisfactorily explains to the Commissioner of Excise that the wastage occurred in spite of proper care and precaution.

3 The Assistant Commissioner for Distilleries has reported that, in the case of Hospet Distillery, the wastage for the half year ending 31-3-47 (for which period the licence was issued) was 3420.5 proof gallons. Deducting the wastage of 1.5% allowed, the excess wastage of spirits was 1692.3 proof gallons. According to him the excess wastage was due to the storage of large quantities of spirits of high strength for long periods in new wooden vats. The strength of the spirits being high and the vats being new, the absorption and surface evaporation was very high. This wastage was increased by the storage of spirits over long periods. The Assistant Commissioner for Distilleries has, however, stated that no mal practices are suspected and that steps are being taken for the replacement of wooden vats by steel ones. In B.P. D.No.395 Pro/47 dated 29-7-47, the Board held that the Distillers were extremely careless and that, when there was excess wastage in the first month itself, they should have taken steps to prevent wastage over the margin allowed. As the Board was not satisfied that the wastage in excess of 1.5% could not have been prevented by the exercise of proper care and precaution, it ordered the collection of duty at the tariff rate viz., Rs.56-4-0 per proof gallon on the excess wastage of 1692.3 proof gallons, which works out to Rs.95,191-14-0.

4 In their petitions dated 20-8-47 and 30-8-47 Messrs. The India Sugars and Refineries Ltd., represent that wastage in a distillery is calculated once a quarter and average is struck once a year on the 31st March and that, if there were to be any excess wastage in any particular quarter it is adjusted in the subsequent quarter wherein the wastage is lower than the minimum. They add that in the present case, the wastage is calculated for 5½ months working from middle of October 1946 to 31--3--47 and that the excess wastage was due to the storage of spirits in wooden vats and hot weather during the quarter ending 31-3-47. Due to restrictions on booking on railways, they had to carry large stocks during the quarter ending 31-3-47, when the atmospheric temperature was high. This also partly contributed to the excess

wastage

wastage. Finally, the company represent that they are making arrangements to replace wooden vats by steel ones and request that the duty on the excess wastage may be waived. As the petitions of the Company amount to an appeal against the orders of the previous Commissioner, the Board requests the orders of the Government on the appeal of the Company. Copies of petitions dated 20-8-47 and 30-8-47 of Messrs. The India Sugars and Refineries Ltd., Hospet are enclosed. H 3-5-48

Munzoor Husain
ASSISTANT SECRETARY. 12/9/48

To The Secretary to Government, Revenue Department (with encls.)

Rs 12/9
AMR. 11.9.

3

Copy of letter dated 20th August, 1947 of the India Sugars and Refineries Ltd., Hospet.

Excess Wastage - Collection of duty at Tariff Rate.

We acknowledge receipt of your proceedings No.D.No.395(Pro) dated 29-7-47 and regret to note that you have ordered the collection of duty at tariff rate on the excess wastage amounting to Rs.95191-14-(

In this connection we beg to submit the following facts and request for the reconsideration of your decision.

We feel it may not be out of place here to review the circumstances under which the distillery came into existence and why we provided wooden vats in the warehouse.

The Government gave us permission in March 1944 to erect the distillery with an intention to replace jaggery arrack supplied in this and other neighbouring districts with molasses arrack and thus reduce the demand on jaggery which was in short supply.

Hence the distillery was designed for supply of molasses arrack and wooden vats were ordered for storage in the warehouse as arrack cannot be stored in steel tanks.

However, due to scarcity of the material the distillery could not be completed as planned in 1945. Ultimately the construction was completed in August 1946 but unfortunately for us prohibition was introduced in this district from 1st October 1946 and hence we were permitted to manufacture only denatured and rectified spirits..

As soon as permission was given to us for the manufacture of denatured and rectified spirits we realised it will be necessary for us to instal steel tanks for storage. We therefore applied to you on the 30th of November 1946 for a certificate of Essentiality to obtain steel for the construction of steel tanks and thanks to your recommendation on our application, we were granted a licence but unfortunately we have not received any steel against this licence so far.

Nevertheless we started distillation on 22nd September 1946 with two steel tanks of about 6400 gallons capacity and the balance 7 wooden vats of 27000 gls. capacity in the warehouse. During the four months working ending 31st December 1946 we produced about 60,000 proof gallons of spirit and the wastage during the quarter was only 1.2% against the allowed percentage of 1.5%.

As our experience for the four months showed that we can store high strength spirit in wooden vats we continued distillation but unfortunately due to restriction on booking we could not despatch as fast we could produce with the result that we had to carry large stocks during the quarter 31-12-46 to 31-3-47.

The high stock of spirit coupled with the sudden rise in the atmospheric temperature during the quarter resulted in high wastage during the three quarters since we commenced distillation from which it will be seen though the production in the quarter during 31-12-46 to 31-3-47 was 6000 gallons less than the previous quarter the wastage was about 3-1/2 times greater ~~xxxx~~ mainly because of evaporation due to very high atmospheric temperature during this quarter.

As you have ordered the collection of duty on excess wastage, as, we, in your opinion, did not take steps to prevent wastage over the margin allowed by improving the method of storage when wastages showed signs of increasing, we beg to submit that wastage showed sign of increasing only from the end of January when spirit was there in the vats and we could not dispose of it in any way except by issuing it against permits.

We did our best to issue as much quantity as possible and the statement marked "B" enclosed herewith shows the quantity of spirit issued month-war since we commenced distillation upto end of March from which it will be seen that we have made every effort to issue the spirit out of the warehouse to reduce wastages even though booking was very difficult because of the very low priority for spirit.

Since then we have installed one more steel tank of 2400 gallons capacity and are making another of the capacity of 7000 gallons to replace the wooden vats and we assure you, Sir, that we will do our best to keep down the wastage and not to give room for similar complaints in future. As the Assistant Commissioner for Distilleries has now ordered that no high strength spirit is to be stored in wooden vats we assure you sir, that the margin of wastage allowed will never be exceeded again.

Finally we beg to submit, that, as, the wastage occurred in the warehouse which is under the lock and key of the department in the custody of an Assistant Inspector no part of the spirit lost could have gone into consumption and therefore the collection of the duty amounting

amounting to Rs.95191-14-0 is too severe a punishment and too big an amount to be borne by this infant industry only 10 months old.

We therefore trust that taking into consideration several extenuating factors you will be good enough to reconsider your decision and waive the collection of excess duty.

IX

*****

(A)

Statement showing the spirit of wastage for the quarter ending September 46 and March 1947.

Quarter ending.	Proof Gallons stock of Spirit at the beginning of the quarter.	Spirit out-turned in the quarter.	Total.	Net Wastage.	Percentage.
30-9-46.	—	1678.7	1678.7	2.7	0.1
21-12-46.	1675.5	59615.1	61290.6	761.8	1.2
31-3-1947	34386.4	53918.4	88304.8	2656.0	3.0

(B)

From October 1946 to March 1947.

Issues of Spirit with Denaturants in Bulk gallons.

Month.	Bulk gallons.	Remarks.
October 1946.	1285 Gals.	
November, 1946.	4895 ,,	
December 1946.	9625 ,,	
January, 1947.	7325 ,,	
February 1947.	16240 ,,	
March, 1947.	15040 ,,	Total bulk gallons issued upto the end of March 1947.
	54410 gals.	

Copy of letter dated 30th August 1947 of the India Sugars and Refineries Ltd., Hospet.

Sub:- Excess Wastage - Waiving of duty levied.

Further to our letter No.9762 dated 20-8-47 we wish to explain certain points which were not fully explained in our previous letter. The wastage in a distillery is calculated once a quarter and average is struck once a year on 31st March. So if there were to be any excess wastage in any particular quarter it is adjusted in the subsequent quarter wherein the wastage is lower than the minimum.

Usually in any distillery the wastage will be very high during the 6 months January to May and low during the months January to May and low during the months June to December, so the average will be within the per centage prescribed.

In our case however the wastage is calculated only for 5½ months working from middle of October 1946 to 31st March 1947 out of which 3 months happened to be the hottest.

From the statement enclosed herewith our letter dated 20-8-47 it will be seen that the percentage of wastage during the quarter ending 31st December was 1.2% and if we had the benefit of 2 quarters April to June and June to September, the average wastage would have been within the prescribed limit.

Apart from this we believe it is the first time that 67 O.P. spirit is stored in wooden vats in any distillery in this Province and so neither the department nor we had any experience or data regarding the wastage in wooden vats under different conditions of atmospheric temperature and humidity.

However our experience showed that upto end of January when the atmospheric temperature was within 92 , the wastage was within the prescribed limit of 1.5% but when the temperature shot up beyond ~~92~~ 92 the wastage increased steeply. From the monthly statement of wastage it will be noted that the wastage was increasing in direct proportion to the temperature and beyond 92 the rate of evaporation exceeded the ~~excess that~~ percentage allowed. This is not an accident and we submit is conclusive proof that the excess wastage is due to high atmospheric temperature and dry weather. We are not trying to exaggerate the position when we mention that the evaporation could be felt if one held that palm of his hand even six inches away from the vats. If there is any doubt regarding this we will retain one of the wooden vats and demonstrate this during next summer.

As our warehouse has a galvanised roof, the rate of evaporation was accelerated due to radiation of heat through the roof.

The inevitable abosorption of spirit by new wood used in the construction of the vats at the high temperature also contributed in ~~th~~ no small extent to this excess wastage.

There was also no delay in regard to despatches for want of drums. From our letter dated 20th instant it will be seen that during the quarter December to March 1947, we have issued nearly 36,000 gallons bulk which w~~h~~ converted to proof works out to nearly 60,000 gallons proof against our production of 53,000 gallons proof in that quarter. In addition, we had nearly 250 empty drums lying in our yard.

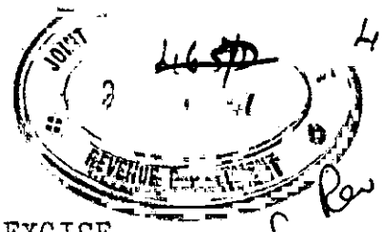
We are explaining these points as we omitted in our previous letter and request that we may be given a n opportunity to explain in person any further doubts you may have before our petition is disposed of.

A Finally we beg to submit that the total amount we have realised as sale proceeds since the commencement of the distillery is about a lakh of rupees and as the penalty now imposed is equal to this amount you will appreciate how difficult it is for us to continue this industry and we earnestly trust you will take a lenient view of the negligence on our part, if it is negligence and a chance to us to prove our bonafides and give this infant industry a new lease of life.

B We also beg to submit that there are several similar instances wherein you have been pleased to condone the penalty and we pray for similar treatment in this instance.

*****

RSS
12/9



BEFORE THE HONOURABLE MINISTER FOR EXCISE.

~~BEFORE THE BOARD OF REVENUE,~~
Chepauk, Madras.

Revision Petition No. of 1947.

India Sugars and Refineries Ltd., Hospet ... Petitioner.

1. The address for service of notices on the petitioner is that of its Advocate, Mr. N.V.B. Sankara Rao at Room No.21, High Court, Madras.

2. The petitioner submits that the order of the Excise Commissioner in D.No.395(Pro.) dated 29-7-1947 (copy enclosed) is contrary to law and on the probabilities of the case.

3. The petitioner submits that the Government gave them permission in March 1944 to erect a Distillery with intent to replace jaggery arrack supplied in the Bellary and other neighbouring Districts with molasses arrack and thus reduce the demand on ~~jaffx~~ jaggery which was in short supply. Hence the distillery was designed for supply of molasses arrack. Wooden vats were ordered for storage in the ware-house as arrack cannot be stored in steel tanks. On account of the scarcity of the material the distillery could not be completed as planned in 1945. Ultimately the construction was completed in August 1946. Prohibition was introduced on October 1, 1946 in the Bellary District where the distillery is situate. As a consequence thereof the petitioner was permitted to manufacture only denatured and rectified spirits, but not arrack.

4. To store the spirit the petitioner was in need of steel tanks. The petitioner therefore applied on 30-11-1946 for a Certificate of Essentiality from the Excise Commissioner to buy steel in the market. Though the latter recommended ~~for the~~.

and a licence was granted, unfortunately the petitioner has not till to-day received any steel against this licence. As the petitioner had in their possession 2 steel tanks with a capacity to hold about 6400 gallons and 7 wooden vats of 27000 gallons capacity, they stated distillation on 22nd September 1946. During the four months' working the production was about 60,000 proof gallons of spirit and these were stored in the steel tanks and wooden vats available with the petitioner. This was done with the approval of the Assistant Commissioner of Distilleries.

5. The wastage that was recorded during the quarter ending 31-12-1946 was only 1.2% as against the allowed percentage viz. 1.5%. In view of the above favourable record of wastage it was thought by the petitioner as well as the Government officers on the spot that they could store high strength spirit in wooden vats and so distillation was continued. But due to want of booking facilities the petitioner could not despatch the spirits as fast as they could produce them, with the result that they had to carry large stocks during the quarter 31-12-1946 to 31-3-1947. To add to this the quarter was a hot season and the temperature was rising with the advance of summer. Neither the Government nor the petitioner were aware that wooden vats were not suitable for storage of high spirit until they discovered at the end of the quarter 31-3-1947 that there was a heavy wastage in the spirits stored in wooden vats. On account of the advance of heat the spirits began to evaporate and consequently wastage also increased. To substantiate this statement the petitioner herewith encloses a statement marked "A" showing the wastage during the two quarters ending 31-12-1946 and 31-3-1947 since the commencement of distillation.

The wastage in the second quarter was about 3½ times greater than the wastage in the previous quarter. The wastage that was found in the first quarter, i.e., in the cold season was only 1.2%.

6. Further the petitioner herewith encloses a statement marked "B" which shows the quantity of spirits issued monthwar since they commenced distillation up to the end of March 1947. It can be seen therefrom that they have made every effort to issue the spirit out of the warehouse in order to reduce the wastage even though booking was difficult, owing to the low priority for spirits. The petitioner submits that every precaution was taken to store the spirits and to prevent any wastage.

7. In the absence of any previous experience in the Presidency with wooden vats for storing high strength spirits, the storage was continued in the wooden vats, and due to such storage in wooden vats the wastage occurred. If this fact of the non-suitability of wooden vats for the storage of high strength spirits was made known to the petitioner or if the Government officers with their long experience of distillation and storage of strong spirits had instructed the petitioner not to store the spirits in wooden vats this would not have happened. The petitioner submits that neither the Government nor the petitioner had any data regarding the wastage due to storage in wooden vats under different conditions of atmospheric temperature and humidity. The petitioner submits that the petitioner has taken every precaution in the matter and it is the nature that has contributed to the wastage over which they had no power of control and which

9

they have not anticipated. The petitioner has taken every care and precaution to prevent wastage. He has not at all been negligent.

8. Further the petitioner submits that wastage for the purpose of collection of duty on the excess shall be calculated at the end of every 12 months from the date on which the licence comes into force. If the calculation is made on this basis it would have been an advantage to the petitioner and the average of wastage would have been lessened.

9. The order of the learned Commissioner that the deficiency could not have been caused entirely by evaporation is not correct. The learned Commissioner ought to have seen that it is impossible also that any malpractice could have occurred in this case as the entire stock is always under the lock and key of the Government and premises guarded day and night by the Abkari guards.

10. The learned Commissioner erred in saying that even presuming that there was no malpractice the Board holds that the distiller was extremely careless. The petitioner submits that such was not thecase, but on the other hand the petitioner had taken every precaution necessary to store ~~the xprixixy~~ the spirits.

11. The learned Commissioner ought to have called for an explanation before levying any duty on the petitioner and the learned Commissioner also erred in not giving any notice to the petitioner for an opportunity to explain the wastage as per Rule 32 of the Distillery Manual relating to "Distillers and warehouse keepers to account for deficiency

in stocks", and thereby the learned Commissioner has not followed the provisions of the said Rule 32 (Copy enclosed for ready reference).

12. The learned Commissioner ought to have seen that the total amount, the petitioner had realised as sale proceeds since the inception of the Distillery is about a lakh of rupees and the penalty now imposed is equal to the same amount. The learned Commissioner ought to have held that this is not a proper case to levy penalty and if such an amount is levied as penalty the industry will have to be closed for ever.

For the reasons stated above the petitioner prays that the Honourable ~~Board~~ ministers may be pleased to hear the petitioner's Advocate and revise the order of the Commissioner dated 29-7-1947.

Rs. 967

N. V. S. Sundara Rao
Advocate for the

PETITIONER.

BEFORE THE
BOARD OF REVENUE

Chepauk,
Madras.

Revn. Petn. No. of 4

India. Sugar s and Refineries
Ltd. Hospet.
-- Petitioner

Petition re: penalty
levied on wastage of
spirit - excess collec-
tion of duty, on spirits.

Post Box No.405 Telegraphic Code word "Quyadarce"

Proceedings/ Office of the Board of Revenue (Excise), Chepauk, Madras

D.No.395(Pro) Dated. 29-7-1947

C.K.Vijayaraghavan Esq., I.C.S.,
Commissioner of Excise and Prohibition.

Sub:- Prohibition - Hospet Distillery - Excess wastage collection of duty at tariff rates ordered.

Read: From the Assistant Commissioner for Distilleries letter No.1961/47-B. dated 5-7-47

Resolution:-

It is seen from the report of the Assistant Commissioner for Distilleries that the wastage that has occurred in Hospet Distillery from the date of commencement of the Distillery up to 31-3-47 is 3420.5 P.G. deducting a wastage of 1.5% allowed, the excess wastage of spirit works out to 1692.3 P.G. This excess wastage is said to be due to the storage of large quantities of spirits of high strength for long periods in new wooden vats. The Board is not satisfied that the wastage in excess of 1.5% could not have been prevented by the exercise of proper care and precaution. The deficiency of 1692.3 P.G. in six months even after allowing 1½% is very excessive and could not have been caused entirely by evaporation. Even presuming that there were no malpractices, the Board holds that the Distiller was extremely careless. When there was excessive wastage in the first month itself, he should have taken steps to prevent wastage over the margin allowed, by improving the met storage. This he has failed to do and the Board is not therefore, prepared to waive collection of duty which in this case amounts to Rs.95191-14-0.

Sd./ Munzoor Hussain
Assistant Secretary.

To:
The Assistant Commissioner for Distilleries (with enclosures)
Copy to Inspector Northern Distillery Circle,
Copy to Distillery Officer, Hospet.
Copy to Collector of Bellary. Copy to Messrs. The India Sugars and Refineries Ltd., Hospet

Forwarded/By Order.

Sd. xxxxxxxxxx
Superintendent.

True copy/

Statement showing the Spirit of wastage for the quarter ending September'46, December'46 & March, 1947.

Quarter ending.	Proof gallons stock of Spirit at the beginning of the quarter	Spirit out-turned in the quarter.	Total	Net Wastage	Percentage.
30- 9-46		1678.7	1678.7	2.7	0.1
31-12-46	1675.5	59615.1	61290.6	761.8	1.2
31- 3-47	34386.4	53918.4	88304.8	2656.0	3.0

(B)

Form October 1946 to March, 1947.

Issues of Spirit with Denaturants in Bulk Gallons.

MONTH	BULK GALLONS.	REMARKS
October 1946	1285 Gals.	
November 1946	4895	
December 1946	9625	
January 1947	7325	
February 1947	16240	
March 1947	15040	
	54410 Gals.	Total Bulk gallons issue up to the end of March'4

Hospet.

For THE INDIA SUGARS & REFINERIES LTD

Sd/- M.K. BHANDARKAR.

Rule 32:-- Distillers and warehouse-keepers to account for deficiency in stocks:

An account shall be taken of the distiller's and warehouse-keeper's stocks at such intervals not exceeding three months, and in such manner as the Commissioner may direct; and the distillers and warehouse-keepers shall pay to Government duty at the tariff rate on all spirits which are not forthcoming and which could not be accounted for, to the satisfaction of the Commissioner, in excess of an allowance of 1½ per cent which shall be made for wastage. Wastage for the purpose of collection of duty on the excess as aforesaid shall be calculated at the end of every twelve months from the date on which the licence comes into force. If the licence is granted for a period of less than twelve months, the wastage shall be calculated at the end of such period;

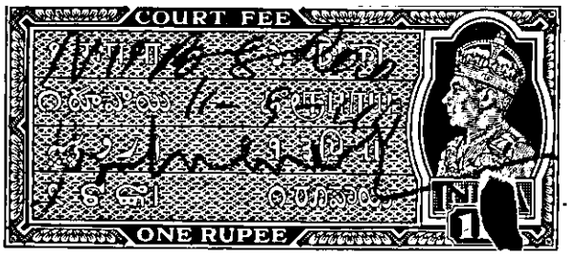
Provided that if it is proved to the satisfaction of the Commissioner or of such officer as he may appoint, that any deficiency in excess of 1½ per cent could not have been prevented by the exercise of proper care and precaution; the payment of duty at the above rate on such deficiency shall not be required.

15

Before the Hon'ble Ministers for Excise

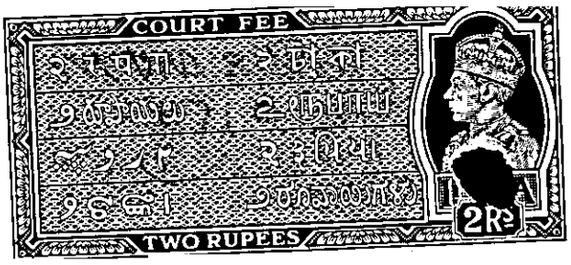
~~In the High Court of J~~

No- -



Against

No. of



In the Court of the

Appellant
Petitioner

India Sugars & Refineries Hospet

Vs.

Respondent.

~~I~~ We India Sugars & Refineries at Hospet

in the above ~~Appeal~~ Petition do hereby appoint and retain

Mr. N. V. B. SANKARA RAO

Advocate of the High Court to appear for ~~me~~ us in the above ~~Appeal~~ Petition and to conduct and prosecute or defend the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including all applications for return of documents or the receipt of any moneys that may be payable to ~~me~~ us in the said ~~Appeal~~ Petition and also in appeals under Section 15 of the Letters Patent and in applications for leave to appeal to His Majesty in Council and in all applications for review of Judgment.

For India Sugars & Refineries Ltd
Hospet
N. K. Narasimha
Manager.

I certify that the contents of this Vakalat were read out and explained in in my presence to the executant who appeared perfectly to understand the same and made his, her their signature in my presence.

Executed before me this *day of* 19 .

16

District.

The Hon'ble Ministers for Excise

In the ~~High Court of~~ ~~JUDICATURE~~ AT MADRAS.

No. of 194

AGAINST

No. of 194

On the file of the.....

VAKALAT

Accepted

N.V.B. Sankara Rao

~~Appellant~~
Advocate for ~~Respondent~~
Petitioner

194

MR. N. V. B. SANKARA RAO

~~Appellant~~
Advocate for Petitioner
~~Respondent~~

Address for service of the said Counsel is:—

21, Law Chambers,
High Court Buildings, Madras.

39
14/10

171

Rev Dept

NO 4400-D/47

Memo No 4400-D/47-2 dated 11-10-47

Prohibition - Hospet Distillery - Excise wastage - Collection of duty at tariff rate - Appeal against the order of the Bd. of Revenue

Please see pp 1-2 cf

From the Bd. of Rev. CR No 27/22 Pro/47 XF-3 dated 9.9.1947

The Bd. of Revenue is requested to state whether the facts stated in the last two paragraphs of the letter dated 20.8.1947 from the India Sugars and Refineries Ltd. Hospet (Copy enclosed) are correct. The Bd. is also requested to state definitely whether or not it considers it desirable for the Government to grant any special

A & B on p. 5 cf

K on p. 3 cf

P.T.O

18

Condonation by way of waiving or reducing the penalty in this case

By
11/10/(4) -
DC

(11:10 am)

To
The Addl. Dy. Com
(Exc. & Tax) with
a copy of Xmas sq
dtd with
enel
Asst
16/10

Board of Revenue (Excise) Department.

--

Subject:-Prohibition-Hospet Distillery-Excess wastage-collection of duty at tariff rate-Appeal against the orders of the Board-Report submitted-

Read:-Government Memorandum No.4400 D/47-2,dated 11-10-47.

C.R.No.27122-Pro/47-XF3

Station,Triplicane,Madras,5 Dated 2-12-1947.

From

Md.Munzoor Husain Khan Sahib Bahadur,B.A.(Hons),
Assistant Secretary,Board of Revenue(Excise)

--

V.N.Kudva Esq.,C.I.E.,I.C.S.,
Member,Board of Revenue and Commissioner of Land Revenue,
Excise and Prohibition.

--

Reference:-

With reference to the Government Memorandum cited the Board submits the following report.

2.The facts of the case were reported to Government in Board's C.R.No.27122-Pro/47-XF3, dated 9-9-1947. As regards the representation of the Distillers that the total amount realised by them as sale proceeds since the commencement of the distillery is about a lakh, the Assistant Commissioner for Distilleries reports that the price of denatured spirit sold by the distillers in the Bombay market is not known. Calculating at the rate prevailing in the Madras market viz., Re.1-12-0 to Rs.2/- per bulk gallon the total amount realised by the Company by the sale of 54410 gallons of denatured spirit manufactured in their distillery may be estimated at about a lakh.

3.As regards instances of condonation of excess wastages, referred to by the distillers in their petition, the Board submits that in two instances, once in respect of Mangalore Distillery and once in respect of Vuyyuru distillery; excess wastages have been waived. In the case of Mangalore, the quantity involved was 13.4 proof gallons (duty at tariff rate would be Rs.753-12-0) and in the case of Vuyyuru 18.4 proof gallons (a tariff duty Rs.1035/-). In these two cases, it will be observed, that the quantities were very small as compared with 1692.3 proof gallons now under reference in Hospet Distillery. The grounds for waiving duty in the case of Mangalore were that transactions were carried on in small quantities throughout the 12 months and the cashew arrack stored was 1243.1 proof gallons. In the case of Vuyyuru Distillery, the wastage was due to natural causes consequent on long storage of concentrated spirit and the absorption of liquor by the new wooden vats and to evaporation. There was no evidence of want of care in these cases and hence the wastages were passed.

4.

20

4. Either the penalty should be levied fully or it should be completely waived. The main points in favour of the latter are that the distillers are quite new to the distillery business and have only just started the distillery and that the wastages have occurred due to the storage of spirits of high strength in large quantities in new wooden vats and to the atmospheric conditions. No portion of the liquor is reported to have gone into consumption. The base used for the manufacture of spirits being molasses, outturned in the sugar factory, belonging to the distillers, a loss in the distillery business affects the sugar factory business as well. The present policy of the Government is to encourage the sugar industry and other new enterprises. Further, power alcohol may also have to be produced in the distillery at a future date. If the Government consider that in the above circumstances the explanation of the distillers may be accepted and that the huge penalty imposed on the distiller may affect their trade, it may be waived as a special case with a severe warning to the Distillers against such carelessness in future.

14

Munzoor Husain
5/12/17
Assistant Secretary.

To the Secretary to Government, Revenue Department.

R.P.N.4/12.
9/6/17.

Rev. Dept.

CM 400 D/47 Pt. I of (5)

Pl. issue, docket 36/2011
& return Pt. 1 - 5 cf
Pt. 5 - 10 cf
Pt. 19 - 20 cf

Read again: G.O. Ms. No. 2113 Rev. dated 28-9-1946.

Read also: From the Bd. of Rev. (Excise), C.R. No. 27122 Rso/47-XF3 dated 9-9-1947
From the India Sugars & Refineries Ltd., Hospet, petition dated 24-9-'47
From the Bd. of Rev. (Excise), C.R. No. 27122 Rso/47 XF3 dated 2-12-47

G.O. Ms. No. 107 dated 29-1-1948.

The Govt. sanction the waiver, as a special case, of the collection of the penalty of Rs. 95,191-14-0 (Rupees ninety five thousand one hundred and ninety one and annas fourteen only) from Messrs The India Sugars and Refineries Ltd., Hospet, in respect of the excess wastage for the half year ending 31-3-1947. The petitioners

are, however, severly warned against careless storage of spirit in future.

2.1.48

To the Petitioners thro' Sri N.V.B. Sankara Rao, Advocate, Room No. 21, High Court, Madras.

To the Bd. of Rev. (Excise)

To the A.G. thro' Dis.

Apd

Revenue Dylt

U.P. Excise Act — Hapur distillery — Excess wastage
Collection of duty at tariff rate
Petition

CR-6400/47 — From the Board of Revenue Alg. CR 27122 Prof 47-XF3
HH-5 Cf — 8-9-47.
HH-10 Cf — Petition from the Hapur distillery of 24-8-47

To AS.

Please see the Board's Reference at its enclosure at HH 1-5 Cf, the petition on HH 6-10 Cf and Hon'ble's minute on pt 6 Cf. With reference to Hon'ble's minute it is submitted that the Board's remarks have already been received & are at HH 1-2 Cf.

pt 4 Cf pt 22 — 2. Under rule 32 of the Distilleries & Warehouse Rules the distillery has to pay to the Govt duty at the tariff rate viz Rs 56-4-0 per ... proof gallon on all spirits which are not forthcoming and which could not be accounted for to the satisfaction of the Commissioner, in excess of an allowance of 1½ per cent which shall be made for wastage. If the licence is granted for a period of less than 12 months, the wastage is calculated at the end of the lesser period. The Commissioner of Excise can however waive the payment of duty if he is satisfied that the deficiency in excess of 1½ percent could not have been prevented by the exercise of proper care & precaution. In the present case the Board is not satisfied that the wastage in excess of 1.5% could not have been prevented by the exercise of proper care and precaution and it therefore ordered the levy of duty on the excess wastage. The duty levied comes to Rs 95,191-14-0. There is no provision for an appeal to the Govt against the Board's orders & the only point for consideration is whether in the circumstances now stated by the distillers any

pt 2 Cf

pt 2 Cf

concession showed the shortage. ~~[illegible]~~

3. The points raised by the distillers are:-

(1) that the wastage was calculated not for a full year but for 5½ months ending 31.3.47; that evaporation was high during the quarter ending 31-3-47 & that if they had the benefit of the next two quarters the excess would have been within the prescribed limit

A on p 4 of

(2) that they were not able to procure a sufficient number of steel tanks & thus the spirit had to be stored in 2 steel tanks & 7 wooden vats & that mixture

Para 4 on pp 6-7 of & B on p 6 of

The Excise dept & the distillers had any experience of or data regarding the wastage in wooden vats under different conditions of atmospheric temperature & humidity; &

(3) that as the spirit was in the custody of an Excise Inspector it could not have gone into consumption and that the collection of a duty of Rs 95191-14-0 is too big an amount for the company only 10 months old. The Company's sale proceeds amounts to about a lakh of rupees.

X on H 3-4 of

4. The Board has not offered any specific recommendation with reference to the points now raised by the distillers. As the amount involved is large it seems desirable to have the Board's recommn in the matter. Orders whether it may be called for Finance may see for remarks

for p 1-2 of H

6C 29.9.47 In the Bd's order (Copy on p. 12 A) the Bd held that even presuming that there were no malpractices, the distiller was extremely careless & that he should have taken steps to prevent wastage over the margin allowed by improving the methods of storage. The contentions of the petitioner in his present petitions have been summarised

~~The Board's opinion~~ The Bd. ~~appears~~ has not commented on these contentions & has apparently accepted them

I agree. B.M. 10.47

The petitioner appears to have made out a case for the waiving of the penalty. It may be considered

35/9/47

Fin.

Finance (AA)

Rev. U.O 4400/47

SECRETARY TO THE GOVT. OF INDIA 58865 1 OCT 1947 FINANCE DEPARTMENT

Please see the reference from the Board of Revenue at pages 1-2 of and the notes on pages 1-3 above.

From the Board's order at page 12 of it is seen that the Board was not satisfied that the wastage in excess of 1.5% could not have been prevented by the exercise of proper care and precaution. The Board held that even presuming that there were no malpractices, the distiller was extremely careless and that he should have taken steps to prevent wastage over the margin allowed by improving the method of storage, and it therefore ordered the levy of duty on the excess wastage now.

In the circumstances, there seems no case for considering the contentions of the petitioner in his present petition. The petitioner contends that the collection of a duty of Rs. 95,191-14-0 is too big an amount for the company only ten months old. It is submitted that it is too big an amount for the Government also to forego. This is a duty which is legitimately due to them under the rules

It is stated that there is no provision for the appeal to the Government against the Board's orders. The appeal can therefore be summarily dismissed.

However, the Board has not commented on the contentions of the petitioner. Revenue may therefore be

requested to invite the specific remarks of the Board on the points raised by the distillers before considering the proposal further.

It does not seem necessary to consult the Board of Revenue again as proposed. It would seem the points urged by the India Sugars and Refineries Ltd. - para 4 of pp.1-2 C.F - have already been considered by the Board of Revenue - Cf. A on page 1 C.F.

The main argument put forth by the Company are:

(1) The wastage in a distillery is calculated once a quarter and an average is struck once a year on 31-3-47 and that in the present case the wastage was calculated for 5½ months working from the middle of October 46 to 31-3-47.

(2) The excess wastage was due to the storage of large quantities of spirits of high strength for long periods in new wooden vats and in hot weather during the quarter ending 31-3-47 and that due to the restrictions of booking on railways they had to carry large stocks during the quarter ending 31-3-47 when the atmospheric temperature was high.

Item (1) above:- Rule 32 of the Distillery and Warehouse Rules contemplates that, where the license is granted for a period less than 12 months wastage shall be calculated at the end of such period for the purpose of collection of duty. There were therefore nothing wrong in the wastage having been calculated in the present case on 31-3-47 the end of license period.

Item (2) above. The maximum wastage allowed in a distillery is 1.5%, and in the present case there was an excess wastage of spirits of 1692.3 proof gallons. The Bd., after carefully considering all aspects of the case, has stated that the distillers were extremely careless and that they should have taken steps in time to prevent wastage and that it was not satisfied that the wastage in excess of 1.5% could not have been prevented by the exercise of proper care and attention. It has therefore correctly ordered the collection of duty of Rs.95,191-14-0.

In the circumstances it does not seem that there is a case for reviewing the orders passed by the Board of Revenue

and for a waiver of the penalty of Rs.95,191-14-0 as proposed by the Revenue Deptt. and this Department may advise that the request of the company be negatived.

If the Revenue Department do not agree, they may be requested to take orders in circulation including H.M.(Finance).

R.4892D
8 (0 4)

It seems desirable first to ask the Board to state definitely whether or not it considers it desirable for the Govt. to grant any special concession by way of waiving or reducing the penalty in this case. The Board may be asked also to report whether A & B on p. 5 cf. are correct or not.

DWD
6.X.47
Rev.

5885-AA-1
6.X.47

To A.5

Rev Dept.

Please see the fin note on pp. 3-5 above. With reference to the suggestion of Fin Secretary, also a draft memo to Bd is put up.

B
11/10(4)

Issued as memo No 44000/47-Rev dt 18-10-47
from the Board of Revenue Rly. CA No- 27122 Dno/47 dt 2-12-47 x Rs

To A5

With reference to Finance Secretary's note at K above please see Board's report at ft 17-20 cf. As already suggested by this deptt at p 3 ante the penalty of Rs 95, 191-14-0 due from the distillers may be waived as a special case. The Distillers may also be warned against such carelessness in future as suggested by the Board. Rev may see for remarks.

SEVENTH ASSISTANT SECRETARY TO GOVERNMENT
C.No: 10139 P&O
10 DEC 1947
DEVELOPMENT DEPARTMENT

126041

Rev. 21.0.44000/47
17-12-47

Deft / Fin

6/

Dev (P&D)

Do A.S.

May be perused and passed on to Fin.

19.12.47 19.12.47 22.12.47

Fin. Dept. P&S III

22-12-47.

Dev. No: 10139 P&S III/47-1

22.12.47.

Finance (Accts A) Deptt.

(Previous Finance notes in pp 3-5 above)

With reference to Secretary's remarks at K on p. 5 above, please see the memo to the Board of Revenue (Excise) at pp 17-18 cf and the reply at pp 19-20 cf.

ASST. SECRETARY TO GOVERNMENT 77942 22 DEC 1947 FINANCE DEPARTMENT

In the circumstances stated by the Board in para 4 on p 20 cf, Revenue propose to accept its recommendation that the penalty of Rs 95,191-14-0 may be waived as a special case with a severe warning to the distillers against such carelessness in future

p 5 above

It is noted that the instances of condonation of excess wastages in respect of Mangalore distillery and Hunsgunin distillery referred to by the Board in para 3 on p. 19 cf are not on all fours with the present case. The Board has stated unambiguously that there was no evidence of want of care in these cases and hence the wastages were passed. Further the factors mentioned by the Board at X on p 19 cf are also not present in the case under consideration. In its proceedings dt 29-7-47 the Board held that even presuming that there were no mal-practices, the distiller was extremely careless and that he should have taken steps to prevent wastage over the margin allowed by improved methods of storage.

para 3, p 19 cf

Last line of p 19 cf

Please see below 2.1.48

p 12 cf

It would seem therefore, that there is no case for waiver of the penalty in this case. The amount involved is Rs 95,191-14-0 and is large. Finance may, therefore advise that the penalty may be levied

Please see below 2/1/48 X on p 4 cf

With reference to the remarks of the Board

at M on p. 20 cf, it is submitted that encouragement may be given to the Sugar Industry ~~by giving grants to the Industry~~ in suitable forms if necessary, waiver of duties legitimately due to the Government under the Rules seems ~~wrong~~ in principle.

H. M. (Fin) should see

Pek 2/1/48

From para: 3 of the Boards reference at page 19 cf, it is observed that the excess wastage in respect of Vuyyuru distillery which was waived was due to natural causes consequent on long storage of Concentrated spirit and to absorption of liquor by new wooden vats and to evaporation. The Board of Revenue has stated that the wastage in the present case also was due to the storage of spirits of high strength in large quantities in new wooden vats and to the atmospheric conditions. In view of this and the fact that the distilleries are new and the levy of the duty amounting to Rs 9.5, 191-14-0 out of about Rs one lakh realized by the distillers by way of sale of denatured spirit during the period ending 31-3-48 will adversely affect the trade, it seems that this Dept may agree with the Board's recommendation which is supported by Revenue, viz. that the levy of the duty may be waived, as a special case, and that the distillers may be severely warned against such carelessness in future. For orders

Hon (Finance) should see.

2.1.48 Rev. 3.1.48

Rev Deptt

may be circulated to Hon (Revenue) Hon (Fin) for orders on A above

5/1/48 6.1.48

Hon (Prohi) 07/911

Hon (Fin)

Hon (Auth)

Hon (Fin)

Waiving should not be resorted to in such cases. It is hoped that the Board will issue necessary instructions to the distillers in this regard. We may agree to the waiving in this case.

Hon'ble Minister (Revenue)

Hon'ble Minister (Finance)

Hon'ble Minister (Prohibition)

Hon'ble Minister (Excise)

Hon'ble Minister (Agriculture)

Hon'ble Minister (Forests)

Hon'ble Minister (Labour)

Hon'ble Minister (Public Works)

Hon'ble Minister (Health)

Hon'ble Minister (Education)

Hon'ble Minister (Local Administration)

Hon'ble Minister (Housing)

Hon'ble Minister (Welfare)

Hon'ble Minister (Transport)

Hon'ble Minister (Industries)

Hon'ble Minister (Commerce)

Hon'ble Minister (Civil Supplies)

Hon'ble Minister (Co-operation)

Hon'ble Minister (Planning)

Hon'ble Minister (Development)

Hon'ble Minister (Rural Development)

Hon'ble Minister (Urban Development)

Hon'ble Minister (Environment)

Hon'ble Minister (Energy)

Hon'ble Minister (Water Resources)

Hon'ble Minister (Irrigation)

Hon'ble Minister (Power)

Hon'ble Minister (Mines)

Hon'ble Minister (Geology)

Hon'ble Minister (Tourism)

Hon'ble Minister (Culture)

Hon'ble Minister (Sports)

Hon'ble Minister (Youth)

Hon'ble Minister (Women)

Hon'ble Minister (Children)

Hon'ble Minister (Disabled)

Hon'ble Minister (Minorities)

Hon'ble Minister (Backward Classes)

Hon'ble Minister (Scheduled Castes)

Hon'ble Minister (Scheduled Tribes)

Hon'ble Minister (Others)

Hon'ble Minister (Others)

Hon'ble Minister (Others

8

To AS

Please see orders overleaf.

2. A draft order is submitted below for approval

16.1.18

16.1.18

16.1.18

16.1.18